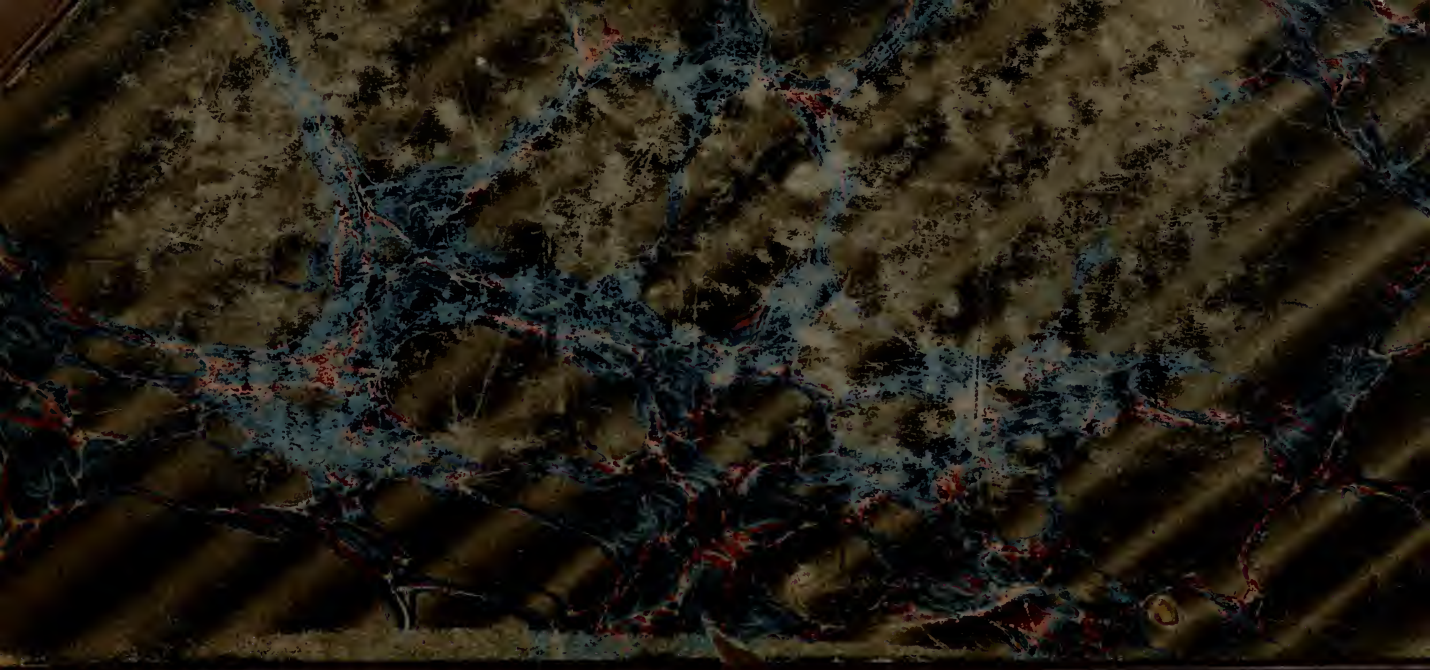

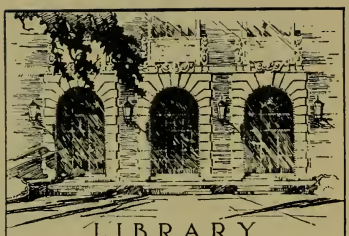

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# NATIVE INDIAN JUDGES.

BY THE

RIGHT HON. SIR ARTHUR HOBHOUSE, K.C.S.I.

(*From the Contemporary Review, June*, 1883.)

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# *CRIMINAL JURISDICTION*

*OVER*

# *ENGLISHMEN IN INDIA.*

BY

C. C. MACRAE, ESQ., LATE OF THE CALCUTTA BAR.

(*From the Fortnightly Review, August*, 1883.)

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# NATIVE INDIAN JUDGES: MR. ILBERT'S BILL.

THE indifference of Englishmen to Indian subjects has been the subject of long and repeated remark. It is, of course, the result of distance and ignorance. But it is also the parent of ignorance, which, on the rare occasions when interest is excited, produces results partly grotesque and partly alarming. We are just now witnessing a phenomenon of this kind. A proposal made by the Government of India for the further utilisation of Natives in their service is distasteful to many of the English community there, who utter an exceeding bitter cry; upon which a number of writers in newspapers and speakers on platforms rush to the conclusion that what really is a small portion of an old, well-established, and thoroughly discussed policy has had its origin in the brain of some speculative politician who wanted to strike out something new. Because the thing is a novelty to them, they treat it as though it were a novelty to men who know Indian politics.

When I sat down to write this paper I had selected some passages from newspaper articles and reports, as illustrations of my meaning. But on opening the *Times* of the 30th of March, I found a speech delivered by Lord Salisbury at Birmingham, which I take as reported there. And I prefer to take his speech as a starting-point, not for the sake of personal controversy with him, but because his position gives his utterances a great importance. If an able and experienced statesman like Lord Salisbury, who for several years held the reins of Indian administration, can, after time

for inquiry, so misconceive an Indian problem as he appears to have done, misconception by others sinks into comparative insignificance.

It is true that there has since been a debate in the House of Lords on Lord Ripon's policy, which was attacked by the Conservative leaders. But the main assault was directed to the point of local self-government, which I do not propose to discuss in this paper. For though the encouragement of local self-government rests on the same broad grounds of policy as the employment of Natives in the Civil Service, it has a different history, which would take space to exhibit. I will only say of it here, that Lord Ripon's policy seems to me to be nothing but a cautious advance in the direction indicated by Lord Lawrence, and followed by Lord Mayo and Lord Northbrook.

It is remarkable that Lord Lytton, who led the attack in a very temperate and thoughtful speech, treated the excitement over the Jurisdiction Bill as being due not so much to the demerits of that Bill, as to its having come on the back of "other more sweeping measures," meaning those which relate to local government. In fact, I do not find in the debate any new argument against the Jurisdiction Bill. Lord Salisbury, as reported by the *Times*, repeated what he said at Birmingham, though not so pointedly or fully. He therefore remains the most prominent assailant of the measure, and his Birmingham speech remains the most important of his arguments upon it, and therefore a proper and indeed necessary guide for those who wish to defend it against misconception.

His Lordship is reported to have spoken thus :—

"There is only one other matter with respect to which I wish to point out to you the importance of a truly national policy *as opposed to the various theories and sentiments which are suggested now.* I do not know if you have looked at the papers lately sufficiently to be aware that a *great and vital question has been raised in India* . . . the question whether Englishmen in that part of the Empire *shall or shall not be placed at the mercy of Native Judges.*"

Then, after referring to the protection given to English litigants in Turkey and other countries, he continues :

"What would your feeling be if you were in some distant and thinly-populated land, far from all English succour, and *your life or honour* were exposed to the decision of some tribunal consisting of a coloured man? . . . .

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"What will be the effect of this ill-advised, measure which has been adopted in defiance of national interests, *and for the sake of those sentiments and theories of which I spoke?*"

And he then answers his question by saying that capital will flee away from India, and the prosperity of the country and our trade with it will be destroyed.

There is not a sentence of this speech which is not pregnant with misconceptions of the small measure now pending, as I expect to make apparent before I have done. But though the measure is small, it rests on the broadest and deepest principles of policy. The suggestion that a question has just been raised for the sake of novel sentiments and theories has no basis in fact. The question raised, not by the Government of India, who are only moving on well-marked lines, but by the non-official English community and their abettors in England, is between two methods of governing India. What goal shall we aim at? What ideal shall we set before our eyes? "Our own supremacy," says one set of thinkers. "The welfare of the Indians," says another.

This difference of view underlies controversies, not only as to the employment of Natives, but as to their education, as to the freedom of their press, and occasionally as to the treatment of neighbouring States. My wish is to take a wider range than is afforded by a mere criticism on the pending measure and its assailants; and to show that from the time when our position as Rulers of India became thoroughly realised to the minds of Indian statesmen, they have had the two theories of government well in view; that men of great eminence have insisted on the nobler and more generous principle of government for the welfare of the Indians; that the English Parliament has always recognised that principle as its guide; that important steps have been taken in pursuance of it and that the wisdom of those steps has hitherto been justified by experience. I am fully aware that an opponent will reply that of course he desires the welfare of the Indians, but that their welfare depends on the maintenance of our supremacy. That, however, is only another mode of stating the essential difference between the two schools of statesmen. Those who put our supremacy in the foreground would not admit that it is for the welfare of the Indians to attain such mental and political stature as would enable them to manage their own affairs. Moreover, the statesmen of what I call the more generous school, have their retort even on the

lower ground. Their contention is that nothing will bring our rule to a brief and disastrous end so certainly as persistence in excluding the Natives from mental and political growth; and that nothing is so likely to secure for our rule a long duration—and when the inevitable change comes, an euthanasia—as a hearty endeavour to give them the best training we can.

I will now show what has been thought and said on this subject, though I must be more sparing of my quotations than I could wish.

I suppose that nobody on the roll of Indian statesmen has a higher reputation for wisdom, for profound knowledge and experience of the country, or for administrative ability, than Sir Thomas Munro. He was never weary of insisting upon our duty to employ the Natives of India in the government of India, as those may learn who will read Sir A. Arbuthnot's selections from his writings. I subjoin some passages from a minute writing by him in the year 1824:—

"Unless we suppose that they are inferior to us in natural ability, which there is no reason to believe, it is much more likely that they will be duly qualified for their employments than Europeans for theirs, because the field of selection is so much greater. . . . .

"We profess to seek their improvement, but propose means the adverse to success. The advocates of improvement do not seem to have perceived the great springs on which it depends; they propose to place no confidence in the Natives, to give them no authority, and to exclude them from office as much as possible; but they are bent in their zeal for enlightening them by the general diffusion of knowledge. No conceit more wild or absurd than this was ever engendered in the darkest ages; for what is in every age and every country the great stimulus to the pursuit of knowledge, but the prospect of fame, or wealth, or power? Or what is even the use of great attainments if they are not to be devoted to their noblest purpose, the service of the community, by employing those who possess them, according to their respective qualifications, in the various duties of the public administration of the country. . . .

"Our books alone will do little or nothing; dry simple literature will never improve the character of a nation. To produce this effect it must open the road to wealth, and honour and public employment. . . .

"Even if we could suppose that it were practicable without the aid of a single Native to conduct the whole affairs of the country

both in the higher and in all subordinate offices by means of Europeans, it ought not to be done, because it would be both politically and morally wrong. . . .

"There is one great question to which we should look in all our arrangements: What is to be the final result on the character of the people? Is it to be raised, or is it to be lowered? . . .

'We should look upon India not as a temporary possession, but as one which is to be maintained permanently until the Natives shall in some future age have abandoned most of their superstitions and prejudices, and become sufficiently enlightened to frame a regular government for themselves, and to conduct and preserve it. Whenever such a time shall arrive, it will probably be best for both countries that the British control over India should be gradually withdrawn. . . .

"We shall see no reason to doubt that if we pursue steadily the proper measures, we shall in time so far improve the character of our Indian subjects as to enable them to govern and protect themselves."

On a par with the name of Munro for Indian statesmanship stands that of Mountstuart Elphinstone. He gave an opinion to the Committee of the House of Commons which sat prior to the passing of the Charter Act of 1833. And he spoke as follows of the natives of India :—

"The great peculiarity in their situation arises from the introduction of a Foreign Government. This at first operated beneficially, by establishing tranquility and introducing improvements in administration. Its next effects were less beneficial. Under a Native Government, independent of the mutual adaptation of the institutions and the people, there is a connected chain throughout the society, and a free communication between the different parts. Notwithstanding the institution of castes, there is no country where men can rise with more ease from the lowest rank to the highest."

He gives instances, and continues :—

"Promotion from among the common people to all the ranks of civil and military employment, short of sovereignty, are of daily occurrence among Native States, and this keeps up the spirit of the people, and in that respect partially supplies the place of popular institutions. The free intercourse of the different ranks also keeps up a sort of circulation and diffusion of such knowledge and such sentiments as exist in the society. Under us, on the contrary, the community is divided into two perfectly distinct and dissimilar bodies, of which the one is torpid and inactive, while all the sense and power seem concentrated in the other. The

first object therefore is to break down the separation between the classes, and raise the Natives by education and public trust to a level with their present rulers."

He then shows the difficulty of doing this by the hands of a foreign government, and the necessity for great caution as well as constancy in the effort, and continues :—"It seems desirable gradually to introduce them into offices of higher rank and emolument, and afterwards of higher trust. I should see no objection to a Native member of a Board, and should wish to see one district committed experimentally to a Native Judge, and another to a Native Collector."

These men were not theorists, except in the sense in which every one who proposes a change of policy is a theorist. They were hard-headed, practical men, who had gone through perilous times, whose work had been tried as by fire and found excellent. And even sixty years ago Elphinstone was for trying an experiment in administration by Natives, bolder than any which the Government of India has yet propounded.

I pass on to the important Charter Act of 1833, which took away the trade of the East India Company, which gave large legislative powers to the Government of India, and which provided for the free admission into the country of Europeans who had previously been placed under severe restrictions by the Company. It should be explained here that great difficulties had been found in bringing Englishmen under the dominion of regular law. It has been supposed by some recent speakers that the Supreme Court, manned not by the Company's judges but by the King's judges, was erected for the protection of Englishmen as against Natives. Its object was precisely the reverse. It was to protect Natives from the oppressive conduct of Englishmen, and to subject the latter to some kind of law. It is true, however, that, owing to the ignorance of English statesmen, they made mistakes in detail when they tried to govern India beyond laying down the broadest principles of policy; and that the constitution of the Supreme Court was so ill-adapted to its circumstances that it long proved the source of great oppression to the Natives, and of impunity to lawless Englishmen. One great object of the Act of 1833 was to restore the character of the Supreme Court as protector of the Natives simultaneously with the freer admission of Englishmen into the country.

In the debate of June, 1833, Mr. Charles Grant, then President of the Board of Control, quoted the opinions of eminent Indian officers, such as Mr. Bailey and Mr. Holt. Mackenzie and Sir Charles Grey, in favour of the principles which he proposed to enact, and which he expressed as follows:—"It should be laid down as an inflexible rule that no European should enter into that country unless on the condition of being placed under the same laws and tribunals as the Natives."

Capital cases were excepted from this general principle. He added:—That no person should go to India but in connection with the interest of the Natives, nay, in subserviency to their interests, for he looked upon a regard to the interest of the Natives as their first duty, and of the first importance."*

To attain the desired supremacy of Law, powers of making laws were given to the Government of India. To attain the desired supremacy of the tribunals, there was passed an enactment which still stands on the statute-book:—"No Native of the said territories, nor any natural-born subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment under the said Company."†

When the measure reached the House of Lords, Lord Ellenborough represented the opposite school of statesmen. He said:—

"Our very existence in India depended upon the exclusion of the Natives from military and political power. We have won the Empire of India by the sword, and we must preserve it by the same means, doing at the same time everything that was consistent with our existence there for the good of the people of India. The present was a crude, ill-digested plan, the offspring of unfounded theories formed by men who knew nothing of India."‡

On the 10th of July the matter was again debated in the House of Commons, when Mr. Macaulay delivered a very remarkable speech, the whole of which is well worth reading even at this distance of time. Amongst other things, it contained a proposal, destined to bear fruit after many years, for appointing the civilians by examination. Of the

*Hansard, vol. xviii. pp. 735–8 † 3 & 4 Gul. IV. cap. 85, sec. 87
‡ Hansard, vol. xix. pp. 191, 192.

proposal that no Native should be excluded from office he spoke thus:—

"We are told that the time can never come when the Natives of India can be admitted to high civil and military office. We are told that this is the condition on which we hold our power. We are told that we are bound to confer on our subjects every benefit which they are capable of enjoying?—No—Which it is in our power to confer on them?—No—but which we can confer on them without hazard to our domination. Against that proposition I solemnly protest, as inconsistent alike with sound policy and sound morality. I am far, very far, from wishing to proceed hastily in this most delicate matter. I feel that for the good of India itself the admission of Natives to high office must be effected by slow degrees. But that when the fulness of time is come, when the interest of India requires the change, we ought to refuse to make that change lest we should endanger our own power—this is a doctrine which I cannot think of without indignation. Governments, like men, may buy existence too dear. 'Propter vitam vivendi perdere causas' is a despicable policy either in individuals or in States. . . . .

"Are we to keep the people of India ignorant in order that we 'may keep them submissive'? or do we think that we can give them knowledge without awakening ambition? or do we mean to awaken ambition and to provide it with no legitimate vent? Who will answer any of these questions in the affirmative? Yet one of them must be answered in the affirmative by every person who maintains that we ought to exclude the Native from high office. I have no fears. The path of duty is plain before us, and it is also the path of wisdom, of national prosperity, of national honour."

Mr. Charles Wynn, who spoke for the Opposition side of the House on this occasion, expressed unreserved agreement with the foregoing sentiments, and his conviction that the only principle on which India could justly or wisely be administered was that of admitting Natives to participate in the government in all offices for which they were competent. And he went on to combat what he called the pertinacity and prejudice with which that principle had been resisted.*

How Macaulay used his position in India to carry into effect the principles he uttered in England is well known. He advocated liberal education, and a free Press. What he did in the way of subjecting Europeans to courts of law led to consequences so much resembling what is now

* Hansard, vol. xix. pp. 534-7

happening in India, that I will give a short account of it, partly taken from Mr. Trevelyan's "Life of Macaulay."

Before the year 1836, the jurisdiction of provincial courts over British subjects in matters of property and of civil litigation was very imperfect. In that year the Government of India resolved to give complete jurisdiction in civil matters to the ordinary courts in the Mofussil—that is to say, throughout all India, except the three towns of Madras, Calcutta, and Bombay. The change was convenient for everybody—indeed was essential for the due administration of justice; but the non-official English resented it furiously, because it deprived them of a distinctive privilege. An excited meeting was held at Calcutta, at which utter ruin was predicted to the English race in India, to our Indian dominion, and with it to the trade of Great Britain. One of the speakers drew the following picture:—

"I have seen at a Hindoo festival, a naked dishevelled figure, his face painted with grotesque colours, and his long hair besmeared with dirt and ashes. His tongue was pierced with an iron bar, and his breast was scorched by the fire from the burning altar which rested on his stomach. This revolting figure, covered with ashes, dirt, and bleeding voluntary wounds, may the next moment ascend the Sudder Bench, and in a suit between a Hindoo and an Englishman, think it an act of sanctity to decide against law in favour of a professor of the true faith."

I pause here a moment to show how absurdity repeats itself when panic, terror, and rage have displaced common sense. Among other rubbish telegraphed over for consumption in England by the correspondent of the *Times*, who is a heated partisan against Lord Ripon's measure, is the speech of one Mr. Bransom, a member of the Calcutta bar:—

"He would conclude by picturing the scene in court in some remote district, where a zemindar, having a grudge against a planter, might, during the planter's absence in Calcutta, trump up a charge against his wife, and drag her into court before the Native Magistrate, armed with the powers which the Bill would confer. What would be the result if the husband returned and entered the court while the case was proceeding? He feared bloodshed."

The imagery of 1836 may be a little coarser than that of 1883, but the spirit is the same. The imaginary fakir

becoming a Sudder judge is not more absurd than the imaginary zemindar, and the imaginary planter. It is at least as easy to trump up civil charges as criminal charges. For nearly fifty years the zemindar has had his opportunity of trumping up civil charges against Europeans before a Native Judge; but we have not heard of his doing it. The annoyance to a European of attendance before a Native Judge must be nearly the same whether the charge be non-payment of wages or beating a servant. For nearly fifty years he has submitted to attend in the former case. Why should he shed somebody's blood in the latter case? It seems not to occur to this passionate gentleman, or to others who use the same style of argument, that the whole fabric of trumped-up charges rests on the assumption that the Native Criminal Judge will be an idiot, or one dominated by hostility to Europeans. No such defect has been found among Native Civil Judges, who are drawn when young from a very wide area. They are found to be, on the whole, as fair, as acute in detecting frauds, as averse to trumped-up charges, as their European colleagues. Much more certainly will that be the case with the Native Criminal Judge; for he will be a picked man, accustomed for years to work with Europeans, and at least their equal in ability.

But to return to Macaulay. His measure was called the Black Act, probably from the image of the fakir Sudder judge. He was threatened with death, and a torrent of obloquy was let loose upon him. How did he meet it? He said that the Act was good and well-timed, but that the strongest reason for passing it was the nature of the opposition. Its opponents repeated every day that the English were the conquerors, the lords of the country, the dominant race; the Government were enemies of freedom, because they would not suffer a small white aristocracy to domineer over millions. These principles he declared to be utterly at variance with reason, with justice, with the honour of the British Government, and with the dearest interests of the Indian people.

We have heard much the same arguments lately, and I trust they will receive substantially the same answer. It only remains to say that the Black Act became law, that by virtue of it and of subsequent enactments in the same sense nearly the whole original and a large part of the appellate civil jurisdiction of India has been placed in

Native hands, and that the change has been a vast benefit to the country without any sort of drawback.

When the Charter Act of 1853 was introduced it was found that the 87th section of the Act of 1833 had been inoperative as regarded higher appointments. In fact, the Directors had applied it only to the Uncovenanted Service, so that Natives were still excluded from all the posts of much dignity, or emolument, which were reserved for the Covenanted Service. There was doubtless real difficulty in finding proper men, but the will to do it was wanting too, and the Natives were very discontented. It was now proposed to establish a system of competition, under which it was suggested that Natives might enter the service if of sufficient merit.

As regards the true principle of government in India, the Parliament of 1853 was no less emphatic than that of 1833.

Sir C. Wood (Lord Halifax), then President of the India Board, said :—

"I do not believe that we shall endanger our Empire by educating the Natives of India. . . . Be that as it may, it seems to me that the path of our duty is clear and plain—to improve the condition and increase the enlightenment of the people. I believe that by so doing we shall strengthen our Empire there; but even if the reverse should be the case, even if the result should be the loss of that Empire, it seems to me that this country will occupy a far prouder position in the history of the world if by our agency a civilised and Christian Empire should be established in India, than if we continued to rule over a people debased by ignorance and degraded by superstition."*

Macauley said :—

"In my opinion we shall not secure or prolong our dominion in India by attempting to exclude the Natives of that country from a share in its government, or attempting to discourage their study of Western arts or learning; and I will only say further, that however that may be, I will never consent to keep them ignorant in order to keep them manageable, or to govern them in ignorance in order that we may govern them long."†

From these sentiments I cannot find that any dissent was expressed.

In the House of Lords Lord Monteagle moved to make

* Hansard, vol. cxxvii. p. 1,169 † Ibid. vol. cxxviii. p. 759

sec. 87 of the Act of 1833 expressly applicable to the Covenanted Service. But on Lord Granville declaring that no distinction between the two services should work the disqualification of any Native of India for public employment, he contented himself with entering a protest on the journals.

In the year 1854 Sir C. Wood framed the well-known despatch which began the vigorous system of education that is still flourishing. In it he again dealt with the fear of political danger, but I do not quote his words, because they are only to the same effect with his speech of the previous year.

In the year 1858 came the change of government consequent on the Mutiny. The discussion ran mostly on other topics, but I will quote what Mr. Gladstone said on the topic of keeping open a political career for the Natives :—

"We have to look at the question how far we can improve their qualifications for that career, and the measure of their qualifications must be the measure of their admission. This is not the opinion of theorists nor the version of philanthropists. There never was a more practical writer than Mr. Kaye, and in his History he says, 'The admission of the Natives of India to the highest offices of State is simply a question of time.' And there is another name entitled to great weight in this House, Mr. Halliday, who says, 'I believe that our mission in India is to qualify the Natives for governing themselves.'"

Mr. Gladstone then goes on to show, that owing to the disturbed condition of the country it was not opportune to deal with such a question.*

In November of the same year was published the Queen's proclamation to the people of India, which contained the following passage :—"And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to offices in our service, the duties of which they may be qualified by their education, ability, and integrity to discharge."

The competitive system has been found to do very ittle for the admission of Natives to the higher offices, if for no other reason, because the examinations are held in England. At this moment there are, I believe, only nine in the Covenanted or higher Civil Service, most of them being English barristers.

* Hansard, vol. cl. p. 1,622

In 1867, when Lord Lawrence was Vceroy, the question was urged upon his attention by Sir Stafford Northcote. The Government of India passed a resolution to the effect that it was "fully alive to the urgent political necessity that the progress of education has created for opening up to Natives of ability and character a more important, dignified, and lucrative sphere of employment in the administration of British India."

Under these circumstances an Act of Parliament was passed in the year 1870, which after affirming the expediency of giving additional facilities for the employment of Natives of proved merit and ability, provided that the Government of India might appoint such Natives to posts theretofore secured by law to the covenanted civil servants. Under this Act, after great delay and discussion, rules were made in the time of Lord Lytton, by virtue of which some half-dozen of Natives have been admitted, and a substantial number will be admitted, to the service under conditions which will entitle them to rise to posts of great importance.

I will cite one more Indian statesman on the vital question I am discussing. In Sir John Strachey's vivid memoir of Lord Mayo occurs the following passage :—

"In administering the Acts providing the means for the execution of local works of utility, Lord Mayo was most anxious that the natives of the country should be associated to the greatest possible extent with the officers of the Government, and he lost no opportunity of urging that they should be encouraged to take an active part in the management of their own local affairs. He always said that he was convinced that from one end of India to the other there was no lack of men of ability and intelligence who could afford most useful help to the Government in this manner. The personal patronage of the Viceroy in regard to the great mass of appointments in India is so limited that it was not easy for Lord Mayo to do much towards promoting such objects by appointing Natives of the country to posts for which they are fitted. But he lost no opportunity of urging their claims, and of declaring the duty of the Government to open to them a wider field of honourable employment."

Now from the time of Munro, whose work began a century ago under Warren Hastings, down to the present time, I have given a chain of evidence to show that English Ministries and Parliaments, and statesmen of weighty character and well versed in Indian affairs, have borne testi-

mony that we should rule India, not for our own benefit or in the spirit of conquerors, or with an eye mainly to the perpetuation of our own dominions, but for the benefit of the Indians, and as far as possible through their agency. If Lord Ripon's pending measure is condemned, either this principle must be denied, or it must be shown that the measure is faulty by being ill-adapted to the purpose of enlisting Natives in our service, or by being abrupt, or violent, or ill-timed. I will address myself to the latter of these alternatives.

Since the great reform of 1833, what has been done to raise the level of mental and political power among the Natives in the three great kindred departments of action that I have mentioned? For their general education much has been done. As to free speech, there have been oscillations of policy, but at present the Indian Press is free enough. But in the matter of employment, change, though constantly contemplated, and from time to time attempted by Indian statesmen, has been very slow in coming.

It is true that Natives are employed throughout the lower judicial service, which has almost entirely passed into their hands, as I have before stated.

As regards criminal jurisdiction, it has for fifty years been an object with Indian statesmen to bring Europeans under the courts established for the country at large. This object was, until the year 1872, one of very great importance, because the English community were, except for some petty offences, triable only by the Supreme Courts, which became merged into the High Courts, and by the Chief Court of the Punjab. These Courts sat only in Madras, Calcutta, Bombay, Allahabad, and Lahore; and the country is so vast, and its communications were so backward, that the suitor might be many days' or even weeks' journey from his tribunal. Practically speaking, there was absolute impunity for most crimes committed by Englishmen, except in the five towns or their immediate neighbourhood.

This impunity was pleasant to the privileged class, and they long resisted the attempts of the Government to deprive them of it. In 1837, when the Penal Code was first drawn, and again in 1843, the Indian Law Commission advised that jurisdiction over Europeans should be conferred on a class of provincial magistrates, which was then entirely manned by Englishmen; and in 1849 the

Government of India brought into Council a Bill for that purpose. The English community objected quite as violently to being tried by an English provincial magistrate as they now object to a Native provincial magistrate, and they seem not to have been ashamed of their violence against the Black Act, or deterred by their defeat and the falsification of every one of their prophecies on that occasion, from exhibiting equal violence and uttering equally foolish prophecies on this. The upshot was that the Court of Directors ordered the Government of India to postpone the question until the Penal Code, which was still under discussion, had been settled. It was evidently thought, even by those who hesitated at that moment to support the action of the Government of India, that when a uniform criminal law was established throughout India the case would be much altered. In 1855, the second Indian Law Commission returned to the charge, and shortly afterwards the Government of India introduced a fresh Bill for the same purpose. This was met by a fresh agitation like the former one. How it would otherwise have ended cannot now be known, for the mutiny broke out, and this, along with much other business, was stopped.

In 1870, the Indian Law Commission emphatically called attention to the omission to remedy so glaring a defect in the law. Indeed, by this time, with the increase of Europeans in the country, the abuse had become intolerable; and, what is perhaps of more importance when there is a question of taking away some badge of privilege, easy communication and increased knowledge of Indian affairs had informed people in England sufficiently to create some body of opinion, and to support the Government against the privileged class. Moreover, the Penal Code had been at work for some years, and was found to be an excellent piece of legislation.

I have pointed out that on previous occasions the class of provincial magistrates whom it was proposed to invest with jurisdiction was exclusively English, but in 1870 it was well known that some Natives might be introduced into that class—indeed, that an Act of Parliament had been passed for that very purpose. Nevertheless, the Commissioners proposed uniformity of jurisdiction.

I should observe that in the meantime Native Police Magistrates, with jurisdiction over Englishmen, have been appointed in the Presidency towns, where they have acted,

and are still acting, in a satisfactory way. We have not heard there of any bloodshed by infuriated Europeans, or of any trumped-up charges more than are heard of before other tribunals.

It is also the case that Natives have been appointed judges of the High Courts which superseded the Supreme and Sudder Courts, and have even acted as Chiefs of those courts. These Native Judges have complete criminal jurisdiction, even to the extent of capital punishment, though they very seldom, if ever, sit as criminal judges.

In 1872, a change came at last, and the great scandal of impunity for English offences when committed in the Mofussil, or provinces, was removed. An Act was passed which has given to certain classes of magistrates power to try the privileged class called European British Subjects, and to inflict on them fines, and imprisonment never exceeding one year in a place appointed for that purpose. For offences justifying a heavier punishment, the offender must still be committed to the High Court. And in every case he has an appeal to the High Court. The new jurisdiction is given only to magistrates who are themselves European British Subjects.

This enactment was passed with very little remark by the privileged class. I was not then in India, and hardly know the cause of their unwonted quiescence; for shortly afterwards, when I was in India, and when the Act began to work, there was a great outburst of fury. A District Magistrate sent an Englishman to prison for brutally beating a Native. The English of Calcutta talked as if the foundations of the world were broken up. They would have it that the charge must be a fictitious one. All the evils prophesied of the Black Act were prophesied over again now. No Englishman was safe; capital would leave the country, which would be ruined, and English trade with it. The sentence must be reversed, and the magistrate disgraced. The sentence however was upheld. None of the prophecies took effect, and everybody is the better for its being known that there is now a real restraint upon Englishmen whose tempers incline them to violence.

The same feeling showed itself in a more subdued way on two other occasions while I remained in India. Once when a provincial magistrate committed for trial a man accused of murder, and the case for the prosecution broke

down; and once when the Government reproved a magistrate for giving a mere nominal punishment to a "European British Subject," whom he had found guilty of striking his servant so as to kill him.

The precise position of affairs cannot yet be understood until it is explained who these "European British Subjects" are. They are a class artificially created by the Act of 1872. They are all the Queen's subjects, born, naturalised, or domesticated in the United Kingdom, or in the Colonies of Europe, America, Australia, New Zealand, or South Africa, and their legitimate children or grandchildren. I do not wish to put absurd hypotheses, such as that a Kaffir or a Maori would fall within this class, for the purpose of exercising jurisdiction or claiming exemption. But it is worth observing that not Englishmen only, but their half-caste sons, and their more Asiatic grandsons, may now sit in judgment upon English prisoners, and are exempt from the jurisdiction of a judge of pure Indian blood.

To show both the administrative inconvenience and the personal indignity resulting from the present law, I will quote a passage from a very able and instructive speech delivered by Mr. W. W. Hunter, in the Legislative Council at Calcutta on the 9th of March last.

"The Native civilians have now reached a stage in their service when they must become in the natural course District Magistrates and Session Judges. We have guaranteed to them equal rights with their English brethren, yet they must be excluded from those offices in the more eligible districts where English private enterprise exists, and they must be turned out of those offices in any district where private enterprise comes. Let me illustrate this by two examples; one taken from Bengal, the other from Bombay. On the 17th January last, a Native civilian was, in the ordinary course, appointed Joint Magistrate, with powers of a magistrate of the first class, at the important station of Dacca. On the 23rd January he received a letter from the Secretary to the Bengal Government, cancelling the appointment, and transferring him to a less eligible district, on the ground that the opening out of the Dacca and Maimansingh Railway was bringing a number of Europeans into the Dacca district. The gentleman thus qualified had won the second place in his year, by open competition in England, from among several hundred candidates; he is an English barrister, and he had proved his fitness for the post from which he was turned out after twelve years of service. In the Bombay Presidency, a Native civilian holds the important office of

District and Sessions Judge of Kanara. His head-quarters are at Karwar, the coast terminus of the railway which, some time ago, was proposed to be constructed from the Dharwar cotton country. If this scheme should be revived, and the railway sanctioned, the Sessions Judge of Kanara would, under the exigencies of the existing law, have to be turned out of his district. Let us see what this practically means. The gentleman in question is Mr. Tagore. After a distinguished education, both here and in England, he has given about twenty years of unblemished service to the Government, and has established a high reputation as a Judge. He is a near relative of our late colleague the Maharaja Sir Jotendro Mohan Tagore, who during an unusually prolonged period, assisted this Council in making the laws of India. The well-earned ecomiums in which your Excellency expressed your sense of the services thus rendered are still fresh in our memories. Yet we are told that we must not entrust to a member of the same noble house, notwithstanding his training in England, and his twenty years of proved integrity as a Judge, the power of sentencing a European British subject to a short term of imprisonment. This, too, although the European British criminal has the right of immediate appeal from any sentence of imprisonment, however brief, and from any fine, however small. If it were necessary I I could multiply examples. Unfortunately, the time has come when such examples will year by year multiply themselves, unless the existing law is changed."

Such being the state of things all, that Lord Ripon proposes by way of a change is, that when one of the Natives, whom for fifty years we have laboured to get into our service, is of such proved capacity and merit as to obtain an appointment into a higher class of magistracy, he shall not, merely on account of his race, be excluded from functions which other magistrates of his class exercise.

I think that everyone who has followed what I have written will see the reasons for such a change, and that it is the necessary consequence of the long movement for the employment of the Natives. It was proposed in 1872, and was then supported by a majority of the Government of India, and by five of the Legislative Council out of twelve. It has been brought forward now by the Bengal Government. The Government of India consulted all the Local Governments upon it, and with the exception of the very small Province of Coorg, all those Governments, and most of their component members and the officers consulted by them, were in favour, though a new Lieutenant-Governor of Bengal has taken an opposite view to his predecessor.

All our experience goes to prove that it is a prudent step and a beneficial one. Something may be argued from the success of the Native criminal courts in the Presidency towns. Much stronger is the argument from the Native civil courts. I have heard a judge's personal status referred to as a reason why his authority on the particular law he was laying down should be considered greater or less; but I have never heard it suggested that Hindoo or Mohammedan judges favoured their own people, or that either favoured Natives as against Europeans. And yet the vast mass of Indian litigation is decided by Hindoo and Mohammedan judges.

One favourite argument used against the measure seems to me so transparently fallacious, that I should not reply to it if I did not find it frequently repeated, and that by able men. It is founded on the existence of other privileges besides that one which the Jurisdiction Bill strikes at. There are, it is said, a great many anomalies in India, Various classes of Natives have privileges and customs, some of them very inconvenient. Europeans have privileges. which we are not proposing to take away. What is the use of abolishing one anomaly when we retain a heap of others? We are straining at gnats and swallowing camels. Lord Lytton puts this dilemma. We have two alternatives. We may place Europeans and Natives on an absolute equality by abolishing all distinctive laws and privileges. If not prepared to do that, let us take things as they are in good part. Moreover, it is added, the Natives ought not to complain of European privileges when they have so many of their own.

The first answer to this line of argument is, that it supposes that the only, or at least the main, motive for this Jurisdiction Bill is to remove an anomaly. I have written this paper to little purpose unless I have made it clear that what is to be removed is not merely an anomaly, but a hurtful obstruction to a great policy. The second answer is that Lord Lytton's dilemma is an exceedingly common one, and yet nobody is ever unwillingly entangled in its horns. When has the possibility of doing everything been accepted by the statesman as a reason for doing nothing? Only when he wishes to do nothing. English statesmen in especial are reproached for their piecemeal legislation. That means that we take a step forward when and as circumstances call for it and make it practicable.

Piecemeal and opportunist legislation has its drawbacks; and so comprehensive legislation, and slap-dash legislation, and standing stock still, have each its merits. But by piecemeal legislation we manage to adjust old arrangements to the wants of a growing society in a way which causes a less amount of convulsion, and is more consistent with sympathy between ruler and subject, and with harmony among the various classes of society, and with steady progress, than is found to be the case with other methods.

The question here is whether it is expedient to give a certain jurisdiction to Native Magistrates. If it is, it may or may not be right to urge Lord Ripon to do something more. But his proposal does not become inexpedient because he does nothing more.

So with the privileges accorded to Natives. The argument assumes that the only or main reason for the Bill is that Natives complain of the present law. That they complain is an excellent reason for looking to see how the law works, and whether it should be altered. But it is altered not because the Natives complain, but because on their complaint it is found to require alteration.

Since we have been rulers in India many Native customs, some very important ones, have been abolished by law, and so have the privileges of Europeans been curtailed by law. There have been many steps towards uniformity, though we are very far from uniformity yet. At every stage the arguments now used might have been used, probably have been. Why do you make this change and not make others? The answer is: one thing at a time; we do not know that absolute uniformity is either attainable or desirable; we are doing what circumstances call upon us and enable us to do; if it is good, do not oppose it because there is not more of it; if it is good to bring Natives more within the general law, the thing is not made bad by the circumstance that Europeans remain privileged in some particulars; and if it is good to bring Europeans more within the general law, it does not become bad because Natives remain privileged. Let each case be judged upon its own merits.

There is then no substantial argument against the change, except the excitement of the English non-official community; and what that is worth let those judge who will take the pains to study with how little cause they have been ex-

cited on like occasions, and how groundless their fears have proved to be.

Now I would ask anybody possessed of the true state of the case to follow Lord Salisbury's account, and to mark how entirely the opponents of the measure have misunderstood it.

"A great and vital question has been raised." No, the great and vital question is the training and employment of Natives, which was decided by Parliament in principle fifty years ago, and has ever since been calling for one change or another.

"The measure has been adopted for the sake of sentiments and theories." No, it is part of a far-seeing policy insisted on by Ministries, Parliaments, and the most experienced statesmen. It is dictated by circumstances and favoured by experience. The sentiments and the theories are all on the side of those who cling to a useless and injurious restriction because it is a badge of conquest and privilege.

"The question is whether Englishmen shall or shall not be placed at the mercy of Native Judges." No, the question is whether a Magistrate of proved ability shall, merely because he is of pure Indian blood, be declared incapable of exercising a limited jurisdiction, not only over Englishmen, but over a large class of persons with some English blood in their veins: a jurisdiction which the Magistrate's own subordinates may exercise if they have the requisite drops of blood.

"What would your feelings be if you were in some distant and thinly populated land, far from all English succour, and your life and honour were exposed to the decision of some tribunal consisting of a coloured man?" Where, then, are these thinly populated lands, far from all English succour, and which are to be presided over by a Native civil servant? Lord Ripon will have to send a Commission of Inquiry to find them. How is life exposed to the decision of a tribunal which can, at the utmost, imprison for one year? What evidence is there that coloured men who are worthy to be judges are less careful of honour than uncoloured men? A coloured man who showed himself regardless of people's honour would soon find himself corrected by the High Court; and Lord Salisbury should remember that no one of the privileged class is so far from English succour but that he has an

appeal to the High Court. And what amount of colour is enough to excite mistrust? Could the present Advocate-General of Calcutta be trusted with criminal jurisdiction? I myself, were I accused of a crime, would trust him entirely. But I believe he is an Armenian, and not a European British subject. Is the son of an English father and Hindoo mother too coloured to be a judge? Or is the son of that half-caste son by a Hindoo mother too coloured? If so, they are both European British subjects, and the law of 1872, as tested by colour, stands condemned.

As for the analogy of ex-territorial jurisdiction in Turkey and the like, it does not apply. The Turkish courts refused to administer justice to Christians, and would not receive their evidence. The punishments inflicted under Turkish or Chinese law are very cruel and abhorrent to us. But the Native Civil Servant who is a judge will administer the same laws by the same methods as the European Civil Servant who is a judge.

As for the prophesies of the flight of capital and the ruin of trade, they date from the Black Act, and have been falsified too often to impress the mind much, even when repeated by Lord Salisbury.

Then shall we abandon the noble principles of government which have animated our statesmen for more than half a century? I am only too well aware of the recrudescence of the doctrine of force, and the doctrine that mankind are mostly fools who require the strong and wise Ruler to break their heads if they do not conduct themselves as he thinks proper. I am aware what charm such doctrines have for those who are pleased to identify themselves with the strong and wise Ruler, and their weaker neighbours with the fools. We have seen lately, with reference to our invasion of Afghanistan, the naked assertion of principles over which even Napoleon Buonaparte, while he acted on them, thought it best to throw a decent veil of fine sentiment—that there is one moral law for men aching in their private affairs, and another for the same men aching in their national affairs. Never since the days of the Melian Conference has it been more boldly asserted that in dealing with their neighbours nations have only their own interests to consider. And now we are told—not by Lord Salisbury I am glad to say—as a weighty argument against Lord Ripon's measure, that we hold India by conquest, and that

if we do not govern in the spirit of conquerors, and by open straightforward assertions of our superiority, we are shifting the foundations on which our government rests. I cannot discuss these matters at the end of a paper already too long. I will only say that I consider such principles of government to be shallow, short-sighted, and dangerous, and I for one disclaim them as earnestly, though I cannot do so as eloquently, as Macaulay disclaimed them in 1833 and in 1853.

What may be the progress and outcome of our rule in India, no man is wise enough to foresee. Its origin and history are without precedent, and so must be its end. But we may feel confidence that we are acting most wisely when we advance towards the highest ideal by the most cautious and well-considered steps. That appears to me to have been, in the main, the animating principle of our Government for at least half a century, and there is no reason to believe that the present Government are departing from it now.

ARTHUR HOBHOUSE.

# CRIMINAL JURISDICTION OVER ENGLISHMEN IN INDIA.

THE storm of passion which has been aroused in India by the introduction of the so-called Ilbert Bill, and the agitation which has been set on foot to excite public feeling in this country on the matter, have succeeded in creating a general and rapidly-growing interest in the subject, and in bringing it to the front rank of Imperial questions. Notwithstanding all that has been said and written on the broad issue raised by the Bill, the facts necessary to be known, in order to form a competent judgment upon it, are very imperfectly understood, even by the large majority of Anglo-Indians, and are, naturally, almost wholly unknown to the bulk of the English public. It may, therefore, not be amiss to give an accurate and substantially complete statement of the main facts leading up to and bearing on the question, and to bring together and examine the principal arguments which have been urged for and against the passing of the measure. By those who, like myself, are in favour of the Bill, the fact has to be faced that the overwhelming preponderance of Anglo-Indian non-official opinion is against it. It is idle to seek to dispose of this circumstance by attributing it altogether to prejudice. No one will deny that, in the opinion thus held, there is a large element of prejudice, but the character and position of many of those who have set themselves in opposition to the Bill make it imperative on those who

differ from them to give the fullest attention to all that they have to say, and to establish sufficient reasons why their opinion should not prevail.

From the beginning of the century down to the year 1836 the position of things, so far as regarded the position of Englishmen in India, was shortly as follows. In the Presidency towns they were civilly and criminally subject only to the jurisdiction of the Supreme Courts administering English law. In the interior, or Mofussil, they were civilly liable to the Company's Courts, which were not bound to administer English law; but no native judicial officers of those courts was allowed to try suits to which a British subject was a party. For criminal offences, except certain petty offences in which jurisdiction was given to the civilian magistrate by a statute of 1813, British subjects could only be tried by the Supreme Courts according to English law.

The first great change was made in 1836. By this time the natives had been admitted to a large share in the administration of justice in the Company's Courts, and by an Act of that year it was enacted that thenceforth no person whatever should, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever excepted from the jurisdiction of any of the Company's Civil Courts. This Act was followed up by others of a like effect, and ever since that time the administration of justice in civil cases has been exercised by natives over Europeans and natives alike throughout India. At the present day the judges in the Courts of first instance are almost entirely natives, and so well have they discharged the responsibilities put upon them, that it is a notorious fact that in the great majority of cases where appeals have been preferred from their decisions, and the immediate Court above under an English civilian judge has differed from them, their decisions have been reaffirmed by the highest Courts of Appeal, whether the High Courts or Privy Council.

Encouraged by the success of these measures, and legislating in a similar spirit, Lord Dalhousie's Government in the year 1849 introduced a Bill for extending the criminal jurisdiction of the Company's Courts, whether under English or native magistrates, over all British subjects resident outside the towns of Calcutta, Madras, and Bombay. The only limit of jurisdiction proposed by the Bill was the power to sentence to death, which was reserved to the Supreme

Courts. Lord Dalhousie approved of the principle of this Bill, but under his advice its passing was postponed until the amendment of the criminal law at large, which was then in hand in the preparation of the Indian Penal Code and other measures, was ready to be accomplished.

The Penal Code was completed and ready to pass in 1857, and in accordance with Lord Dalhousie's suggestion in 1849, the measure then submitted to his Council was brought forward as part of the general legislation, and incorporated in a code of Criminal Procedure for all India, which was proposed to be enacted as a complement to the Penal Code. The Mutiny intervened, and for the time rendered it practically impossible to carry a scheme which might have the effect of giving fresh powers to natives over Englishmen. Accordingly, when the Criminal Procedure Code was finally passed in 1861, the clause which would have had the effect was withdrawn and omitted. So the matter continued until 1872, when the Criminal Procedure Code came to be revised and amended. The question was then reopened, and the law was altered to the state in which it now stands, after the substantial re-enactment in 1882 of what had been done on this point in 1872.

The effect of this legislation may be thus shortly stated. Prior to 1872, the High Courts in the Presidency towns could alone try British subjects for criminal offences, other than petty offences under the Act of 1813, committed by them in India. In 1872, power was given to European Brirish magistrates of the first class, according to the grades of the Indian Civil Service, and to European British subjects appointed to be justices of the peace and invested with like powers, to try European British subjects in the Mofussil for minor criminal offences, and to inflict sentences not exceeding three months' imprisonment and Rs. 1,000 fine. Similar powers were conferred on the district sessions judges, if themselves European British subjects, up to a maximum sentence of one year's imprisonment or fine. If the offence shown require a graver punishment, the sessions judge must transfer it for trial to the High Court, and that Court alone has original jurisdiction where an offence punishable with death or transportation for life is charged against a European British subject.

Under the Code, a European British subject has the privilege of being tried by a jury, of which not less that half shall be Europeans or Americans, and he can also appeal

to the High Court against a conviction. Even if he be tried in the High Court the remainder of the jury may be natives, but the verdict of a majority is allowed and sufficient in either case. When the Act of 1872 was being carried through the Council, it was proposed not to confine the jurisdiction then about to be conferred on magistrates, justices of the peace, and sessions judges, to European British subjects; but the proposal was negatived by a majority of seven to five, the minority comprising a majority of the then Executive Council of the Government of India.

Lastly, it should be mentioned that, in 1877, an Act was passed empowering Presidency magistrates, whether natives or not, to exercise the same criminal jurisdiction over European British subjects as over natives within the limits of the Presidency towns. Under this Act, several native gentlemen have exercised the full jurisdiction thereby conferred; and one of these, a member of the Covenanted Civil Service, did so until disqualified, by his promotion to higher judicial office in the Mofussil, to try even the pettiest criminal charge made against a European British subject in his district.

Such, shortly, is the history of legislation on this matter up to the present time. It is now to be seen what circumstances led to the introduction of the so-called Ilbert Bill, and what it proposes to do. The direct cause of the measure is the admission of natives to the Covenanted Civil Service. At the time of the passing of the Act of 1872, no natives, who had by competition in England passed into that service, had attained the rank or standing, from thirteen to twenty-five years' service, necessary to qualify them to be magistrates of the first class or sessions judges. By 1882 this had ceased to be so. Mr. Gupta, the gentleman to whom I just now referred, had, after some time officiating as Presidency magistrate in Calcutta, and there exercising, to the entire satisfaction of the Government and the public, the full powers of an English magistrate in a similar position, been transferred to a more responsible appointment in the interior, where by reason of the provisions of the existing law he was incapacitated from trying even the most petty charge against a European British subject.

Another native civilian and English barrister, Mr. Dutt, who had gained the second place from amongst several

hundred candidates in the examination in this country for admission into the Indian Civil Service, and who had come to be appointed joint magistrate of the important district of Dacca, was suddenly deprived of that appointment and removed to a less eligible district, on the ground that the opening of a new railway was bringing a number of Europeans to the Dacca district.

In the Bombay Presidency, Mr. Tagore, another native covenanted civilian, had after eighteen years' distinguished service been appointed district and sessions judge of Kanara, and had gained much credit and reputation in his discharge of the duties of that office. Certain large railway works were about to be commenced in this district, and it was inevitable that, if these were undertaken, it would be necessary to transfer Mr. Tagore to some other district, in order to avoid the inconvenience of there being no European British qualified official within the district, or nearer than some one hundred miles, competent to try the charges which might be expected to arise in consequence of the influx of a body of Europeans employed on these works. These cases had actually occurred, and fresh instances must necessarily occur as the number of natives becoming qualified for these high appointments increases. Further, under a system inaugurated by Lord Cranbrook and Lord Lytton, a new scheme has recently been established of appointing natives to the Covenanted Civil Service by selection and nomination in India, without requiring them to go to England and pass through the competitive examinations for admission to the service held in this country, and under this system it is intended that ultimately one-sixth of the whole Covenanted Service shall consist of natives. Now, under the existing state of things, not only might the disqualification of natives to try any criminal charges preferred against European British subjects tend to deprive them of appointments already earned, as in the cases I have mentioned, but it would also act as a deterrent in preventing the Government from appointing natives to judicial offices in districts containing any considerable number of Europeans. But these are the most favoured districts in the country, and comprise those most immediately under the eyes of Government, and where a judicial officer has the most probable chances of rising in the service by doing his duties to the satisfaction of his superiors. No one, who has not personal experience of the matter, can

understand how keenly appointments to these districts are coveted, and with what feelings of pain and dislike the natives regard being sent to remote frontier districts, far from their homes, families, and relations. If it come to them fairly and equally with their English colleagues, there would be no reasonable ground for complaint in this condition of their service; but where, notwithstanding the Queen's proclamation that her subjects, "of whatever race or creed, be freely and impartially admitted to offices in Her service," the fact of their race tells so unequally against the natives, is it to be wondered at that, in the words of the Maharájá Sir Jotindra Mohan Tagore, speaking in the Legislative Council on this Bill, "the anomaly had been a source of standing complaint with (his) countrymen for a very long time?"

It was with a view to cure this anomaly and to remove the administrative inconveniences to which I have adverted, that this Bill was, in accordance with a promise given to the Maharájá Sir Jotindra Mohan Tagore, at the time of the passing of the amended Code of Criminal Procedure in 1882, introduced by Lord Ripon's Government. Before doing so the Government, by confidential circulars addressed to all the various local governments in India, solicited their opinion on the proposed measure. The result was remarkable. With the single exception of Coorg, the most insignificant of them all, the entire body of governments reported in favour of the suggested legislation. With some few dissentient opinions from certain of the officials consulted, the governments of Madras, Bombay, the North-Western Provinces and Oudh, the Punjab, the Central Provinces, British Burma, Assam, and Hyderabad, expressed themselves in favour of the principle of the alteration proposed to be made in the law.

The Bill was accordingly drafted and introduced into the Council by Mr. Ilbert. It was, and is, however, of the most cautious and carefully-guarded character. It does not propose to confer jurisdiction generally. It confines the power to try criminal charges against European British subjects upon such persons only as may be nominated and elected for their proved fitness for the responsibility. It does not take away one single one of the existing privileges of the European British subject, viz., to be tried by a mixed jury, to have a right of appeal to the High Court in every case, and the limits of jurisdiction and maximum punish-

ment, save and except the one privilege (if such it be), that the judge shall be himself a European British subject. As Mr. Ilbert said, "The single alteration which we propose to make is this. We propose to substitute for the disqualification arising from race, a qualification depending on tried personal fitness."

The apparent justice and simplicity of the measure, and the nature of the replies received to the confidential circular issued to the local governments, might fairly have led the Supreme Government to suppose that the Bill would be received with no worse than temperate criticism. But, as is too well known, there arose from the non-official European community a protest which found expression in the wildest and most violent language, and, rapidly spreading over India, involved the Government in a tempest of denunciation and reproach, and roused the unhappy spirit of race antagonism in a measure not witnessed since the worst days of the Mutiny. In all cases of such legislation, from the passionate agitation against the first "Black Act" in 1836 onwards, experience has shown that the opposition of the European non-official community has to be encountered. Was the Government indefinitely to postpone legislation, which was already needed, and would every year become more pressing, because the opposition was likely to be violent and exaggerated? I have shown, from the mouth of one of the representatives of the native community on the Council, that the want had long been felt by his countrymen, and that, while the Criminal Procedure Code was under discussion, the only reason why the question was not pressed was the assurance that it would be dealt with in a separate enactment. Was it wise to postpone legislation until "the long-standing source of complaint with (the Maharájá's) countrymen" had grown into a universal sense of grievance?

I have carefully studied the speeches made in the debates in the Supreme Legislative Council in Calcutta and elsewhere by the opponents of the measure, and have read such of their published articles and papers as I have been able to procure. Putting aside all arguments resting merely on prejudice, the reasons urged by the worthier antagonists of the Bill may, I think, be summarised as follows:—

1. European residents in the Mofussil, it is said, are

exposed to the constant risk of having fabricated charges against them.

2. Natives are incompetent to fairly try these charges, because—

(*a*) They do not understand the habits and feelings of Europeans.

(*b*) They are unfit to determine the difficult class of cases involved.

(*c*) They will be partial to their own countrymen as against the Europeans.

(*d*) They are liable to be corrupted.

3. The tendency of the above circumstances will be to drive English capital out of India.

4. The Bill seeks to deprive Englishmen of their proper rights to be tried by their own countrymen.

5. It will lower the prestige of Englishmen in the minds of the natives at large, and the security of our position in India depends on maintaining this prestige.

6. There is no necessity for the Bill. It can only be justified as providing a more effectual administration of justice, and this it does not do.

These are, as far as I can ascertain, the main heads of argument urged against the Bill, and I proceed to deal with them in order, but as shortly as possible.

1. This point may be admitted, but its relevancy to the question under consideration obviously depends upon the next head of argument as I have classified them ; and I may remark, in passing, that my experience as a practising barrister in both countries has convinced me that the common notion of Indian perjury as something vastly subtler, more elaborate and difficult to expose, and more common than it is in this country, is greatly exaggerated.

2. Here it is especially to be remembered that it is only proposed by the Bill to confer jurisdiction upon those natives who in competition on equal terms with Englishmen, and after long trial of their judicial qualifications in corresponding positions, have shown themselves worthy to be intrusted with the responsibility. The experiment is not a new one. It has been tried both on the Bench of the High Courts and in the chief magistracies of the Presidency towns, and although cases have arisen over and over again where this objection, if well grounded, must have been substantiated, the contrary has notoriously been the case. Against this, it is contended that the case is different in the

publicity of a Presidency town and the remote interior, where no public opinion is at hand to criticise and expose miscarriage of justice. However true this may have been in past times it is certainly not so now. With the extension of railroads, telegraphs, and improved postal communication, there is not a district in India which is not in ready contact with public opinion. Englishmen and natives alike know that behind every Briton, alert and jealous to take up the first suspicion of unfair justice from the native to the European, stands the whole Anglo-Indian Press. Again, every conviction under the powers proposed to be conferred by this Bill is subject to revision by the High Court; and every native administering those powers will be conscious that only wilful, but even innocent, grave miscarriage of justice would mean the ruin of his hopes of preferment, and would bring upon him certain censure and possible disgrace. Bearing this in mind, the Officiating Judicial Commissioner of Oudh, reporting on the Bill, writes (speaking not of the covenanted native civilians who have entered the service by competition in England, whom he would freely trust, but of those who have been appointed in, and not been out of, India), "I think they would, as a rule, unduly favour the Europeans." But it is further said that it is not the higher class European who has anything to fear, but the low-class European, whose habits a native cannot be expected to understand, and who, in a fit of drunkenness or mere rough horse-play, may do something to outrage the religious feelings or prejudices of natives. As to this, I would state that some of the class indicated are already liable to be criminally tried, even by natives, to a much larger extent than would be the case with European British subjects generally if the Bill became law. Under the Criminal Procedure Code, if a European British subject has been declared a vagrant, and thereafter commit any criminal offence in India, he is amenable to the ordinary Criminal Courts of the country as if he were not a European British subject. Again, even under the existing law, the extra-territoriality only exists where the defendant claims the privilege of being tried as a European British subject; and so little is the want of confidence in the capacity of native magistrate felt, that in suburbs of the Presidency towns, where considerable numbers of Europeans, principally of the lower classes, come to be tried before native magistrates, the great majority waive their status, and prefer to be dealt

with summarily by the native magistrates. The second and fourth branches of this head of objections, viz., the liability of natives to be corrupted, and their alleged incompetency to determine the difficult class of cases involved, are absolutely negatived by experience. For years past all civil cases, involving in numberless instances cases of at least as great complexity and difficulty as any criminal case, and criminal cases of every kind, where the defendants are natives, have in the first instance been adjudicated upon by natives, and the testimony is overwhelming that they have, on the whole, discharged their duties honourably and well. But, apart from this, I repeat that it is not to the body of native judicial authorities indiscriminately that the powers proposed by the Bill are to be given. It is only the pick and cream of the service who are to be entrusted with this very limited jurisdiction—such persons, for instance, as the four native judges who have in succession adorned the Bench of the Calcutta High Court. Anyone acquainted with men like the Hon. Mr. Justices Sumboonath Pundit, Dwarkanath Mitter, Onokool Chunder Mookerjee, and Romesh Chunder Mitter, would repudiate the idea of charges of such a sort being made against them.

3. If the former objection be not, as I conceive it is not, well founded, it follows that this objection falls to the ground with it. But there are two further answers which may be given to it. If ever there where any real foundation for the assertion that to intrust native judges with jurisdiction to try Europeans will tend to drive European capital out of the country, it had at least equal force when, in 1836, it was proposed for the first time to empower natives to try civil cases against Europeans. And we find accordingly that the objection was then raised by the non-official community, and was urged with as much force and vehemence as in the recent agitation. There is not a single one of the arguments which have been used against the Bill on this head which (as readers of the papers of the period, and of Mr. Trevelyan's *Life of Lord Macaulay*, will find) was not urged at the time of the passing of the so-called "Black Act." And although the jurisdiction then conferred was infinitely more sweeping and extensive than that proposed now to be given, the enormous increase in the amount of European capital invested in India at the present day is the best answer that can be given to the prophecy then falsified.

In the second place, it is the fact that for many years

past in the island of Ceylon, which is Indian to all intents and purposes save in the constitution of its government as a colony of the Crown, criminal jurisdiction has been exercised by natives over Englishmen precisely as over natives. If English capital were to be driven out of the country in the one case, why not in the other? But, so far as I know, no one has been bold enough to suggest that the effect of what has been done in Ceylon has been to keep out of the island a shilling of English capital which would otherwise have gone there.

4. This objection ignores existing facts. Whatever may be the alleged right of an Englishman to be tried by his own countrymen (as to which I would merely say that the right relied on is not in fact given by Magna Charta, which is the assumed authority for it, the words of the Charter being, "*per legale judicium parium suorum*, VEL *per legem terræ*"), that right no longer exists in India under the law of that country as it stands. For whether an Englishman be tried by the High Court or by the District Sessions Court there, he is only entitled to have at least one-half of the jury which is to try him composed of Europeans or Americans; the remainder may be of any nationality. And, as everyone knows, it is the jury, and not the judge, who has to try the prisoner.

5. For a fuller answer to this argument than it is possible for me to give here, I would refer to Sir Arthur Hobhouse's latest remarks on the subject. As he has pointed out, the objection represents the whole underlying principle of one school of policy as regards our Government of India as opposed to the policy of another school. The former maintains that our rule rests on bayonets alone, and must be continued in that position to stand. The latter aims, so far as it is practically possible, at absolute justice and equality to all subjects of the Empire alike, and at establishing our supremacy in the goodwill and affection of the natives of India by obtaining their confidence in our fairness and regard for their interests. Between the two conflicting theories there is no short mode of answer which can satisfy both, and each man must judge for himself which he will choose. My own observation and experience in India, so far as they go, agree with my disposition in favour of the latter. The natives of India are, under our present system of government, becoming more and more educated. Numbers of them, whom I have myself known,

were not only men of the highest character, but also of finished education. By which of these two policies are men of that type more likely to become loyal subjects? Let any Englishman of fair mind ask himself the question as if it were his own case, and not the native's? And these men are every day becoming more powerful to influence their countrymen. Amongst the lower classes of their countrymen, again, I have found general gratitude for kindness and courtesy, combined with much docility to their superiors. Are the superiors to be guided to influence them in our favour, and are they to be won by fair and kindly treatment; or are both to be repelled by being treated as of inferior race, and reminded of the bayonets?

Is the history of Ireland, where the former policy has had a trial, so encouraging as to invite us to act on the precedent it affords? I do not myself believe that natives respect us less because they see us treat those of their countrymen whom they respect as equal to ourselves. My personal experience is to the very contrary. But I prefer to let a native speak for himself, and I shall close what I have to say on this point by quoting what I venture to call the noble words of one of those to whom I have shortly before referred.

The Hon. Kristodás Pal, addressing the Council Chamber in Calcutta in the debate on this Bill, said: "Pride of race —I use the phrase in no offensive sense—is a commendable feeling. It is an honest and honourable pride. It has been the mother of good deeds, valiant acts, patriotic exertions, and national glory. But there is a higher and nobler pride, that of fostering human happiness under beneficent law, raising the weak and lowly to the level of the strong and high, and making equal law and equal justice the basis of political paramountcy in the world. It is to that noble feeling I appeal. All Englishmen, whether in India or in England, I humbly think, should rejoice that, within the century and a quarter they have ruled India, they have effected such a complete revolution in the Indian mind, both intellectual and moral, that Indian magistrates are found fit to be trusted with the administration of the laws of the land, not only over their own countrymen, but also over the members of the ruling race. This is a work of which England may justly feel proud. This is a consummation over which all Englishmen may well rejoice."

6. The answer to this objection is, to my mind, one of the

chief arguments in favour of the Bill. I have already shown how far a necessity for it had arisen, and I could quote one of its most distinguished opponents now in this country, to show that it is calculated to promote the more effectual administration of justice. I shall, however, endeavour shortly to show in my own way how this is so, and from my own observation. Let us take one of the large survey maps of India, and look at any district in the interior. Let there be marked upon the map the places where English magistrates qualified to entertain criminal charges against European British subjects are to be found. Let the means of, and the obstructions to, communication, such as great rivers, unmetalled roads, and so on, be shown. I should be surprised if an Englishman, accustomed to justice at his door, were not astonished at the distance and difficulties that intervene between any spot in the greater part of the country, and the only places where justice against a European British subject for a criminal offence can be secured. Bearing in mind that the High Courts alone can try serious cases, and that their original criminal jurisdiction over European British subjects extends to the remotest frontier districts, a by no means unfair parallel would be found in the hypothesis of an Englishman committing a felony in Caithness against a native of the county, and of redress being denied to his victim, except on the condition of his going with his witnesses to the South of England—performing the greater part of the journey on foot, but through a far wilder and more difficult country, without inns or lodgings. But not to take an extreme case, let me instance the province of Assam, where large numbers of Europeans are now employed in tea planting. Suppose an English planter's assistant, in a fit of passion or drunkenness, half kills a native villager. If a charge is prosecuted, the complainant and his witnesses will have at the least to go to and fro over (in most cases) more than one hundred miles on foot or bullock cart, and be kept away from their homes and work for several weeks, while the charge is being investigated and tried. And if it be found to be a case for which a sentence of one year's imprisonment is not an adequate punishment, the unfortunate complainant and his witnesses, who have probably never been fifty miles from their native village, will be sent to Calcutta, some three weeks' journey. They are all the time practically in custody, themselves in charge of the police. What becomes of their

cultivation, their home duties, and their affairs generally, during their absence—where they are lodged, and how they are treated, no one cares, and no one inquires. Is it to be thought that anything but absolute necessity, a case too serious to be hushed up by the police, will induce a native in the greater part of the Mofussil of India to bring a criminal charge against a European British subject? I could give instances to show how this reacts against English capital in increasing the cost of labour imported into the planting districts, but must pass on. The present Bill by no means provides a complete cure for this condition of things, inasmuch as it leaves untouched the exclusive jurisdiction of the High Courts over all offences committed by European British subjects which cannot be adequately punished by one year's imprisonment and fine. But, so far as it goes, it tends to mitigate the mischief; and if to bring justice within convenient and reasonable reach of a people, instead of keeping it so remote and difficult of access as to be practically useless, be to promote its more effectual administration, I trust that I have indicated how this Bill may do so.

I can now only very briefly refer to one other principal argument in favour of the Bill. I mean that of honesty and justice. From the Queen's proclamation in taking over the government of India, through a succession of solemn public assurances, England has pledged herself to the natives of India that she will admit them to share in the government of that country without distinction of race and creed between them and her other subjects in qualifying for office. She has invited and encouraged them to educate themselves to qualify for her service as Englishmen are required to do. The invitation has been accepted, and there are natives who, in the face of enormous difficulties, have, in competition with some of our most highly-educated countrymen, gained honourable place, and have aftar years of trial in the service to which they have thus gained admission, proved themselves to be thoroughly efficient and trustworthy. Are we, in the face of the ever rapidly increasing educated masses of India, without regard to our own good name and honour, to fall short of the assurances we have given, and to proclaim that, though no other fault can be found, the difference of race will not suffer a man to be trusted as we would trust him if he had been born of English parents? I have quoted a Hindu, and I would

refer my readers to the speech of a Mohammedan, the Hon. Sayyad Ahmad Khán, in the debate on this Bill in the Viceregal Council, and published in the papers presented to Parliament, to show whether the natives of India are likely to take a lower view of these questions, and whether it is wise or just to despair of establishing the continuance of our Empire on their goodwill and confidence in our integrity, and to choose rather to enforce it by the Scythian whip, the badges and distinctions of a dominant race, fear, and the armed battalions.

C. C. MACRAE.